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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,814	06/11/2001	David W. Pratt	1053.18	6882

21901 7590 12/24/2002

SMITH & HOPEN PA  
15950 BAY VISTA DRIVE  
SUITE 220  
CLEARWATER, FL 33760

[REDACTED] EXAMINER

KRAMER, DEAN J

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3652

DATE MAILED: 12/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/681,814	PRATT, DAVID W.
	<b>Examiner</b>	<b>Art Unit</b>
	Dean J. Kramer	3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 November 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 7-12 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 11 June 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                           | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 . | 6) <input type="checkbox"/> Other: _____ .                                   |

**DETAILED ACTION**

1. Applicant's election without traverse of the species of Figure 2 in Paper No. 4 is acknowledged. It is noted that while applicant contends that claims 1-6, 9, and 12 are readable on the elected species, only claims 1-6 are deemed to be readable thereon. Claims 9 and 12 recite a "press fit" and a "snap fit" whereas the elected species of Figure 2 shows a threaded connection.
2. Claims 7-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

***Claim Rejections - 35 USC § 112***

3. Claims 3-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3-6 are confusing in that it is unclear whether the phrase "said imperforate cap", as recited in each of these claims, is referring to "an imperforate cap" recited in claim 1 (from which claims 3-6 depend) or "an imperforate cap" recited in claims 3 or 5. Further, claim 5 is confusing in that it appears to be claiming an imperforate cap adapted to fit onto the second end of the body (as recited in the last paragraph of claim 1) and an additional imperforate cap adapted to fit onto the downspout also on the second end of the body.

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***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Robbins.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 5 and 6, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Robbins in view of Hunkin et al..

The Robbins patent shows a pair of imperforate caps (21,23) attachable to opposing ends of a tubular body. The tubular body of the Robbins bailer does not contain a downspout at its lower end.

However, it is old and well known to provide a downspout portion at the lower end of a bailer as is shown at (17) in the Hunkin et al. patent.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to threadedly attach the Robbins bottom end cap (23) to a

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downspout portion of a bailer, such as the bailer shown in the Hunkin et al. patent, in order to safely contain the contents of the tubular body until transported to a sterile environment. The resulting assembly would obviously have threads disposed on the outside wall of the downspout portion to cooperatively engage the threads on the inside wall of the end cap.

#### *Drawings*

8. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "16b". A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The McDonough et al. patent shows an end cap threadedly attachable to one end of a specimen tube.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dean J. Kramer whose telephone number is (703) 308-2181. The examiner can normally be reached on Mon., Tues., Thurs., Fri. (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (703) 308-1113. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



12-19-02

Dean J. Kramer

Primary Examiner

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djk

December 19, 2002